

Bruce L. Campbell, OSB No. 925377

bruce.campbell@millernash.com

John C. Clarke, OSB No. 153245

john.clarke@millernash.com

MILLER NASH GRAHAM & DUNN LLP

3400 U.S. Bancorp Tower 111 S.W. Fifth Avenue

Portland, Oregon 97204

Phone: 503.224.5858

Christopher Knauf, admitted *pro hac vice*

ck@drlcenter.org

Anthony Pinggera, admitted *pro hac vice*

acp@drlcenter.org

DISABILITY RIGHTS LEGAL CENTER

1541 Wilshire Boulevard, Suite 400

Los Angeles, California 90017

Phone: 213.736.1031

Amy Robertson, admitted *pro hac vice*

arobertson@creeclaw.org

Timothy Fox, admitted *pro hac vice*

tfox@creeclaw.org

Pilar Gonzales Morales, admitted *pro hac vice*

pgonzalez@creeclaw.org

CIVIL RIGHTS EDUCATION AND

ENFORCEMENT CENTER

1245 E. Colfax Avenue, Suite 400

Denver, Colorado 80218

Phone: 303.757.7901

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

PHILIP WOLFE, KATALINA DURDEN,
MELISSA LEWIS, JUNIPER SIMONIS,
individually, and DISABILITY RIGHTS
OREGON, an Oregon nonprofit and
advocacy corporation,

Plaintiffs,

Case No. 3:20-cv-01882-SI

DECLARATION OF MELISSA LEWIS IN
SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION

v.

CITY OF PORTLAND, a municipal
corporation; TED WHEELER, in his official
capacity; CHUCK LOVELL, in his official
capacity; MULTNOMAH COUNTY, a
political subdivision of the State; MICHAEL
REESE, in his official capacity; TERRI
DAVIE, in her official capacity; CHAD
WOLF, in his individual capacity;
ALEJANDRO MAYORKAS, in his official
capacity; DONALD WASHINGTON, in his
individual and official capacity; and DOES 1-
100, individual and supervisory officers of
local, state, and federal government,

Defendants.

I, Melissa Lewis, hereby declare and state as follows:

1. My name is Melissa Lewis. I am 18 years of age or older and am otherwise competent to make this declaration. I am an individual plaintiff in this action, and I reside in Portland, Oregon. I make this declaration on personal knowledge of the matters stated in this declaration or from sources deemed reliable.

Page 2 - DECLARATION OF MELISSA LEWIS IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION

4840-5543-6758.1

MILLER NASH GRAHAM & DUNN LLP
ATTORNEYS AT LAW
TELEPHONE: 503.224.5858
3400 U.S. BANCORP TOWER
111 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204

2. I am a person with a disability. I have photosensitive epilepsy and Ehlers-Danlos Syndrome, a connective tissue disorder that results in susceptibility to soft tissue tears and slow healing from those injuries.

3. As a result of my epilepsy, I am prone to life threatening seizures. Although I take medication for my seizures, I still experience stress, sleep disturbances, and have adverse reactions to strobe lights. In addition, because of my connective tissue disorder, I cannot run or move quickly.

4. I have lived in Portland since I was one year old. I work as a videographer. Since May 2020 I have been attending the protest in Portland against police brutality and racist violence. I have attended at least 150 events and protests since they began.

5. On various occasions, while attending protests against law enforcement, I have been subjected to strobe lights which can cause me grand mal or petit mal seizures. Officers have subjected me to strobe lights even on occasions when I have told them that I have epilepsy and how harmful strobes can be for me. Portland Police Bureau (PPB) Officer #1004013 with helmet number 22 has targeted me when using strobe lights because he knows of my epilepsy.

6. My worst fear when attending protests is that I will suffer a seizure. A petit mal seizure would cause me to briefly lose consciousness. A grand mal seizure would cause me to lose consciousness, collapse, and suffer muscle spasms.

7. When law enforcement uses strobe lights, I have to turn around, find a dark place and put my head down to avoid having a grand mal or petit mal seizure. If I am exposed to strobe lights, I get extremely tired and disoriented and I must rely on my companions to pull me away and tell me when the strobe has stopped.

8. On May 31, 2020, I attended a protest at the Justice Center in downtown Portland. I arrived around 6:00 pm and while I was standing in the crowd of protestors, I saw officers from the Portland Police Bureau in full riot gear. The officers indiscriminately hit

protesters with batons, pushed and shoved them to the ground. In some instances, this was in response to actions as insignificant as shaking the fence around the Justice Center.

9. PPB officers gave brief verbal warnings for the crowd to disperse, and then, within seconds of that warning, they rushed the crowd while firing tear gas and flashbang grenades. Because of my disabilities I was not able to move quickly enough to avoid being tear gassed.

10. On June 12, 2020, I again attended a protest at the Justice Center. Once again, PPB officers began to indiscriminately target protestors. I was standing near the chain link fence and, although my hands were up in the air and I was not shaking the fence, PPB officers shot me in the leg with a foam baton. They were standing less than three feet away.

11. The pain was so intense that I had to go to the emergency room. Because PPB's unnecessary use of force, I was diagnosed with IT band syndrome, a condition where the connective tissue around my knee rubs directly against the bone. I was prescribed opiates to deal with the pain and could not put weight on my leg for five days. Afterwards, I had to use crutches for two weeks and a cane for several more weeks after that.

12. I was unable to attend protests for two weeks because of the injury caused by PPB. Around the middle of July, I returned to the protests. On or around July 16th, I attended a protest at the Justice Center. During that protest I saw Border Patrol Tactical Unit (BORTAC) and other federal agents working with PPB officers. BORTAC agents fired tear gas and flashbang grenades into a group of protesters and then rushed protesters, pushing, shoving and hitting people with their batons. PPB officers and federal agents stood shoulder to shoulder as they forcefully dispersed the crowd. The agents gave a verbal warning only seconds before rushing the crowd. In order to avoid further violence from the officers I had to run for several blocks, which caused me shin splints and horrible pain in my legs which lasted for days.

13. Because of the injuries I have suffered at the hands of PPB and because PPB and federal agents make no efforts to accommodate people with disabilities, I am often afraid to attend protests or leave earlier than I would like to. For example, on July 19th, I left the protest at the Justice Center early because I was afraid officers would bullrush the crowd without warnings. I watched livestreams of the protest that night and saw how DHS officers rushed and chased protesters with only a minute's warning.

14. In another instance, on August 7th, I attended a protest at the Multnomah County Sheriff's office. My press credentials were visible, and I had a helmet labeled with "press." PPB declared an unlawful assembly and began rushing the crowd, pushing, shoving and hitting protesters. I stood on the sidewalk with a group of eight to ten other press members. The police yelled at our group to move. I tried to comply, but a PPB officer hit me below my helmet with a baton. He then shoved me violently for not moving quickly enough.

15. Because of the blow to my neck, I went to the hospital the next day and received a cervical collar neck brace. I also had a CT scan which showed inflammation and a hematoma.

16. A couple of days later, on or about August 9th, I attended another protest at the Justice Center. I was standing near the parking lot of the Justice Center with a group of press members and protesters when, without any prior warning, Multnomah County Sheriff's deputies started yelling at us to move while hitting and pushing us with their batons.

17. I complied with the deputies and moved to the sidewalk, yet one of the deputies still pulled me by my backpack, shoved me, and hit me in the ribs with a baton for not moving quickly enough. I tried to explain to the officers that I was trying to comply but could not move any faster for fear of twisting my ankle or suffering another injury. The deputies ignored me and continued to shove, push and jab both me and other press and protesters with their batons.

18. On August 11th, I attended another protest at which PPB officers deployed strobes. While I was recording the protest, I explicitly told the officers present multiple times that I had epilepsy and that my condition was triggered by strobe lights. One officer responded on video that if I had epilepsy, then I shouldn't be out protesting at all. A true and correct copy of this video has been filed with this declaration via thumb drive and is marked as Exhibit 1. At another point in the evening, after making the same statement to another officer, he went out of his way to continue targeting me with strobe lights. I recorded this interaction on video as well. A true and correct copy of this video has been filed with this declaration via thumb drive and is marked as Exhibit 2.

19. On or about August 21st, I attended an action in front of the ICE detention center in Portland; as usual, my press credentials were visible. Without prior warning, DHS and other federal agents fired tear gas, flashbang grenades, and pepper balls at peaceful protesters. One DHS agent launched a tear gas canister directly at me and hit me in the head. I had to go to the emergency room where I was diagnosed with a concussion and a large hematoma.

20. On September 6, I attended an action in Ventura Park commemorating the 100th night of protests in Portland. There were PPB and Oregon State Police (OSP) agents at the park. Protesters attempted to march from the park to PPB's East Precinct; PPB and OSP announced, however, that the protesters were not allowed to leave the park. One person in the crowd, who is suspected to have been a right-wing agitator, threw Molotov cocktails that struck protesters and journalists.

21. Although the Molotov cocktails did not strike law enforcement, PPB and OSP immediately launched a flurry of tear gas canisters at the crowd in the park. For several hours, officers repeatedly prevented protesters from dispersing and leaving the park. Then, at approximately 1:15 a.m., PPB announced that the park had closed at 10:00 p.m. and then charged

the crowd. They hit and shoved into the ground protesters, medics, and members of the press. I was able to get behind the riot line, where I filmed the police tackling a protester.

22. As I was filming, I heard another officer yell that the park was closed. I tried to leave but without any warning the officer tackled me. I fell to the ground and as I tried to pick up my camera and other belongings, I politely told the officer that I was moving as quickly as I could. As I walked away from the officer, he tackled me again. A true and correct copy of a video that reflects this incident, dated September 6th, 2020, has been filed with this declaration via thumb drive as Exhibit 3. I was responsible for recording the video. I made it out of the park confused and in pain after being knocked down twice, and, as was becoming routine, went to the emergency room. I was diagnosed with whiplash and contusions on my left shoulder blade, knees, and thorax.

23. On September 18, I attended a protest near ICE headquarters. With almost no warning, agents fired a barrage of tear gas, hundreds of pepper balls, and stingers at a peaceful crowd. I tried to shield myself behind a door, but I was still shot in the leg seven times.

24. Later that night, I filmed PPB and DHS officers as they coordinated to surround protesters. I was standing on the tailgate of a truck so I could film. DHS and BORTAC agents used more tear gas that night that I have ever seen. The gas enveloped several city blocks; it was incredibly hard to breath or even to see more than a few feet in front of me. As PPB officers began making arrests, one officer grabbed me by my backpack and threw me off the truck. I felt the wind get knocked out of me as my back and hip hit the curb and intense pain radiated throughout my body.

25. Once again, I had to go to the ER. They prescribed me oxycodone due to the severe and continuous pain.

26. On September 23rd, I was at a protest near the Multnomah County Detention Center. PPB declared a riot after someone set a small fire. PPB officers harassed and

prevented protesters from leaving the protest. I stood with another journalist named Scott. As a person of color asked the police to let protesters leave, we both began to film the interaction. We were both in the crosswalk and were not interfering with the police.

27. PPB Officer #148051 started screaming at Scott to move back and get on the sidewalk. We immediately followed his instructions and began moving towards the sidewalk. I tried to tell the officer that we were complying with the order, and he violently shoved me. My foot caught the curb and I fell to the ground hard. I immediately felt a snap and pop in my ankle. The pain was so strong I could not breathe. Right away, I thought that the officer's shove had torn the stitching surrounding the internal leg brace I have that prevents my tendons and ligaments from tearing. I could not get up or walk. A true and correct copy of a video from this incident, dated September 23rd, 2020, has been filed with this declaration via thumb drive and is marked as Exhibit 4.

28. Medics arrived and braced my foot and ankle. The medics also called for an evacuation team to take me to the ER. At the ER they told me that I had likely torn tendons and ligaments in the lateral or posterior ankle, where I already have had multiple surgeries. I was referred to an orthopedic surgeon. Although I was in agonizing pain, the ER could not provide pain medication because of strict opioid restrictions. After this incident, I had to wear a walking boot and an air cast. This interfered with my work as I had to wear the walking boot for three days and a brace for three weeks.

29. On December 31, 2020, 200-250 people met outside the Justice Center at 9:00pm to protest the ruling in the Tamir Rice case. At this protest, some people set off fireworks and there was some property destruction. Around 11:00 pm, approximately fifty DHS officers came out and, without warning, doused the crowd with tear gas and other aerosols. I was hit in the foot with an FN303 marking round, a large metal projectile containing irritant powder. Although I was wearing hard boots, this was very painful.

30. DHS left and returned about 30 minutes later. This time, there were approximately seventy-five officers. Sometime later, they were joined by approximately twenty-five PPB officers. Just before midnight, DHS and PPB officers filled the street with tear gas and smoke bombs to the point that no one could see. They then sprinted forward and charged the crowd without any warning. The officers also utilized pepper balls. A DHS officer grabbed me by my backpack, which is clearly marked "PRESS" and threw me to the ground. I was trampled. I saw my camera on the ground and tried to reach out for it, but my left arm was not moving.

31. A DHS officer screamed for me to move and a medic came to help me. My knees, elbows and hands were bleeding. I went to the ER and they verified that I did not have any broken bones, but when I went to Urgent Care the next day, I found out that I had a separated left shoulder. I had to wear a sling, had bruising all over, and had to be given Oxycodone for pain management once again.

32. The incident on December 31 has made work challenging. Due to the pain in my shoulder, it is very painful to film. Nevertheless, on January 20, 2021, I covered the inauguration day march at the ICE building. The march arrived at ICE headquarters at around 9:15 pm. Approximately 250 people attended. Besides a couple of isolated instances of minor property damage, such as two eggs being thrown at the building, the protest was entirely peaceful.

33. Around 9:30 pm, DHS and BORTAC agents emerged from the building armed with M4 rifles, spray guns containing mace, FN303 launchers used to launch tear gas canisters and other projectiles, pepper ball guns, and other weapons. The agents issued no directives to the crowd before opening fire with pepper balls, tear gas, flashbang grenades, and other munitions.

34. From that point, there was a constant assault by DHS and BORTAC officers on those who were gathered at the detention center, including more tear gas than I have

ever seen used before. I could barely see a yard in front me because of the thickness of the gas. Along with tear gas canisters, agents used devices that resemble leaf blowers and are designed to disperse insecticides on crops.

35. There was something different about the gas being blown by the devices; the smoke was yellow and smelled unusual compared to the normal gas used against protesters. The gas caused profuse vomiting in addition to coughing in significant numbers of the people assembled. Gas masks and respirators were ineffective against whatever chemical the agents were using. I understand that many protesters had to go to the emergency room for treatment.

36. Multiple agents repeatedly employed strobe lights throughout the evening. At around 10:00 pm, in response to the repeated use of strobes, I told the agents, “You’re being sued for strobing epileptics.” In response to this, immediately after telling the agents, an agent shot me directly with a tear gas canister, striking me on my upper right thigh. A true and correct copy of a video from this night has been filed with this declaration via thumb drive and is marked as Exhibit 5. I was responsible for recording the video.

37. I hid from the strobe lights behind umbrellas to keep me from having a seizure. At one point during the protest, however, I witnessed somebody else in the crowd having a seizure because of the agents’ constant use of strobe lights. The agents continued to use strobe lights after this incident despite being fully aware of the seizure. A protest medic was a certified EMT and tended to the patient.

38. At around 11:00 pm, agents advanced on the protesters, continuing to employ tear gas, flashbang grenades, pepper balls, and other munitions. Almost everybody that I saw was either injured by impact weapons, sick from the combination of gasses, or both.

39. In addition to being hit in my right leg with the teargas canister, I was struck on my right leg, left leg, and elbow with pepper balls. The impact from the teargas canister resulted in a massive, painful hematoma that required me to take the next two days off to

recover and to lose income from being unable to cover another protest at the ICE building during that time. A week after the protest, I was still experiencing coughing that I believe is due to the chemicals being sprayed by the officers.

40. Because of multiple direct experiences of law enforcement violence, I am in a constant state of stress and fear, suffer injuries that will never heal, and am forced to deal with lifelong health issues. I have suffered lasting trauma and injuries due to the actions of DHS, PPB, and other agencies. I have trouble sleeping and concentrating on my work including meeting deadlines. The specialists I see for my disabilities find treating me increasingly difficult as police brutality further complicates my health. Since I began covering the protests, I have lost over thirty pounds.

I declare under penalty of perjury and under the laws of the United States, pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge, memory, and belief.

Executed on February 8th, 2021, in the city of Portland, Oregon.

s/ *Melissa Lewis*
Melissa Lewis

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Declaration of Melissa Lewis in Support of Plaintiffs' Motion for Preliminary Injunction on the attorney or party listed below on the date set forth below by the method(s) indicated:

JEFFREY BOSSERT CLARK
Acting Assistant Attorney General
BILLY J. WILLIAMS
United States Attorney
JOHN V. COGHLAN
Deputy Assistant Attorney General
ALEXANDER K. HAAS
Director, Federal Programs Branch
BRIGHAM J. BOWEN
Assistant Director, Federal Programs Branch
MICHAEL P. CLENDENEN, DC #1660091
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, D.C. 20530
Telephone: (202) 353-0693
Facsimile: (202) 616-8460

- ☐ First-class mail, postage prepaid
- ☐ Facsimile, pursuant to ORCP 9 F
- ☐ Hand-delivery
- ☐ Overnight courier, delivery prepaid
- ☐ E-mail, pursuant to ORCP 9 G
- ☒ E-mail copy, as a courtesy only
- ☒ OJD EFILING SYSTEM, if registered at the party's email address as recorded on the date of service in the eFiling system, pursuant to UTCR 21.100.
- ☐ Other

Attorneys for Defendants Wolf and Washington in their official capacity

ELLEN F. ROSENBLUM, OSB #753239
Attorney General
DREW K. BAUMCHEN, OSB #045032
Senior Assistant Attorney General
Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
Telephone: (503) 947-4700
Facsimile: (503) 947-4791
Email: ellen.f.rosenblum@doj.state.or.us
Drew.Baumchen@doj.state.or.us

- ☐ First-class mail, postage prepaid
- ☐ Facsimile, pursuant to ORCP 9 F
- ☐ Hand-delivery
- ☐ Overnight courier, delivery prepaid
- ☐ E-mail, pursuant to ORCP 9 G
- ☒ E-mail copy, as a courtesy only
- ☒ OJD EFILING SYSTEM, if registered at the party's email address as recorded on the date of service in the eFiling system, pursuant to UTCR 21.100.
- ☐ Other

Attorneys for Defendant Terri Davie

DANIEL SIMON, OSB #124544
 Deputy City Attorney
 LINDA LAW, OSB #943660
 Chief Deputy City Attorney
 linda.law@portlandoregon.gov
 LINH T. VU, OSB #004164
 Senior Deputy City Attorney
 linh.vu@portlandoregon.gov
 ELIZABETH C. WOODARD, OSB #075667
 Deputy City Attorney
 beth.woodard@portlandoregon.gov
 Portland City Attorney's Office
 1221 SW 4th Ave., Rm. 430
 Portland, OR 97204
 Telephone: (503) 823-4047
 Facsimile: (503) 823-3089
 Email: dan.simon@portlandoregon.gov
 linda.law@portlandoregon.gov
 linh.vu@portlandoregon.gov
 beth.woodard@portlandoregon.gov

*Attorneys for City of Portland, Ted
 Wheeler and Chuck Lovell*

- ☐ First-class mail, postage prepaid
☐ Facsimile, pursuant to ORCP 9 F
☐ Hand-delivery
☐ Overnight courier, delivery prepaid
☐ E-mail, pursuant to ORCP 9 G
☒ E-mail copy, as a courtesy only
☒ OJD EFILING SYSTEM, if
 registered at the party's email
 address as recorded on the date of
 service in the eFiling system,
 pursuant to UTCR 21.100.
☐ Other

GLENN GREENE
 New York State Bar No. 2674448
 Senior Trial Attorney
 DAVID G. CUTLER
 Illinois State Bar No. 6303130
 Trial Attorney
 Torts Branch, Civil Division
 Constitutional and Specialized Tort Litigation
 PO Box 7146
 Ben Franklin Station
 Washington, D.C. 20044
 Telephone: (202) 616-4143
 Facsimile: (202) 616-4314
 Email: glenn.greene@usdoj.gov

- ☐ First-class mail, postage prepaid
☐ Facsimile, pursuant to ORCP 9 F
☐ Hand-delivery
☐ Overnight courier, delivery prepaid
☐ E-mail, pursuant to ORCP 9 G
☒ E-mail copy, as a courtesy only
☒ OJD EFILING SYSTEM, if
 registered at the party's email
 address as recorded on the date of
 service in the eFiling system,
 pursuant to UTCR 21.100.
☐ Other

*Attorneys for Defendants Wolf and
 Washington in their individual capacity*

CHRIS GILMORE, OSB #980570
Multnomah County Attorney's Office
501 SE Hawthorne Blvd., Ste. 500
Portland, OR 97214
Telephone: (503) 988-3138
Facsimile: (503) 988-3377
Email: chris.gilmore@multco.us

*Attorney for Multnomah County and
Michael Reese*

- ☐ First-class mail, postage prepaid
- ☐ Facsimile, pursuant to ORCP 9 F
- ☐ Hand-delivery
- ☐ Overnight courier, delivery prepaid
- ☐ E-mail, pursuant to ORCP 9 G
- ☒ E-mail copy, as a courtesy only
- ☒ OJD EFILING SYSTEM, if
registered at the party's email
address as recorded on the date of
service in the eFiling system,
pursuant to UTCR 21.100.
- ☐ Other

DATED: February 8, 2021.

s/ John C. Clarke
Attorneys for Plaintiffs